

Sixth Appellate District

San Jose, California

MONDAY, MARCH 26, 2007

H029806 PEOPLE v. MCCLAIN

The judgment is reversed, and the matter is remanded for resentencing. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed March 26, 2007

TUESDAY, MARCH 27, 2007

The following case is submitted this date:

H030616 SMITTICK v. SANTA CLARA COUNTY OFFICE OF EDUCATION

H029905 PEOPLE v. JOHNSON

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed March 27, 2007

H029349 COFFMAN SPECIALITIES, INC. v. WEST COAST AGGREGATES, INC., et al.

By the Court\*:

Appellants' petition for rehearing is denied.  
Filed: March 27, 2007

\*Before Bamattre-Manoukian, Acting P.J., Mihara, J. and McAdams, J.

H027243 PEOPLE v. ZUNIGA

By the Court\*:

Appellant's petition for rehearing is denied.  
Filed: March 27, 2007

\*Before Mihara, Acting P.J., and McAdams, J.

H028839 PEOPLE v. TOLDEN

We modify the judgment as follows: the restitution fine is reduced from \$10,000 to \$200; and the section 290.3 penalty assessment and the court security fee are stricken. As modified, the judgment is affirmed. The clerk of the superior court is ordered to prepare an amended abstract of judgment reflecting these modifications and to forward a copy to the Department of Corrections and Rehabilitation. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed March 27, 2007

Sixth Appellate District

San Jose, California

Tuesday, March 27, 2007 (continued)

H028662 CITY OF SANTA CLARA v. SANDMAN, INC., et al.

The judgment is reversed pursuant to the stipulation of the parties. Each party to bear its own attorney fees and costs on appeal. The remittitur shall issue forthwith. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 27, 2007

H029992 PEOPLE v. WILLIAMS

The judgment is affirmed. The trial court is directed to amend the abstract of judgment in conformity with the actual sentence imposed and this court's opinion and forward the amended abstract to the Department of Corrections. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 27, 2007

H028931 FEDUNIAK, et al. v. CALIFORNIA COASTAL COMMISSION

The judgment is reversed. The Commission is entitled to its costs on appeal (published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 27, 2007

WEDNESDAY, MARCH 28, 2007

H028992 ELITE COMPUTERS & SOFTWARE v. BAHOUN

The judgment is reversed and the matter is remanded to the trial court with directions to reinstate the answer of defendant Bahoun. Plaintiff shall bear the costs of appeal. (not published)  
(McAdams, J.; We concur: Mihara, Acting P.J., Duffy, J.)  
Filed March 28, 2007

H028771 YBARRA, et al. v. WAHL II

The judgment is reversed and the matter is remanded to the trial court with directions to reinstate defendant's answer. Defendant shall have costs on appeal. (not published)  
(McAdams, J.; We concur: Mihara, Acting P.J., Duffy, J.)  
Filed March 28, 2007

H030616 SMITTICK v. SANTA CLARA COUNTY OFFICE OF EDUCATION

The appeal is dismissed. (not published)  
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)  
Filed March 28, 2007  
Wednesday, March 28, 2007 (continued)

H030025 PEOPLE v. TOWNSEND

The judgment is affirmed. (not published)  
(Mihara, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)  
Filed March 28, 2007

Sixth Appellate District

San Jose, California

H029507 In re TRIPP on Habeas Corpus

The petition for writ of habeas corpus is denied. (not published)

(Duffy, J.; We concur: Premo, Acting P.J., Mihara, J.)

Filed March 28, 2007

H029697 PEOPLE v. OWENS

The judgment is modified only to add an order requiring the abstract of judgment to be formally amended to delete any reference to the stricken section 667.5 enhancement. An amended abstract of judgment shall be forwarded to the Department of Corrections. As so modified, the judgment is affirmed. (not published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed March 28, 2007

THURSDAY, MARCH 29, 2007

H029650 PEOPLE v. DHANOWA

The judgment is affirmed. (not published)

(Duffy, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed March 29, 2007

H029903 ESTATE OF GEORGE MARION DRUMMOND, DECEASED

The order appealed from is affirmed. (published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed March 29, 2007

H030068 LEZAMA-CARINO v. MILLER

The motion to dismiss the appeal is denied. (published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed March 29, 2007

Sixth Appellate District

San Jose, California

Thursday, March 29, 2007 (continued)

H029985 PEOPLE v. OCHOA

We have concluded that the trial court did not fail to determine either that defendant willfully failed to pay restitution or that she had the ability to pay. We so conclude because the court's statutory obligation under Penal Code section 1203.2, subdivision (a), to make these determinations before revoking probation was met by defendant's admission of the violation as alleged. Further, in this case, the record in any event discloses a factual basis for the admission. The judgment is accordingly affirmed. (not published)  
(Duffy, J.; We concur: Bamattre-Manoukian, Acting P.J., McAdams, J.)

Filed March 29, 2007

H030041 PEOPLE v. BARROW

The judgment is affirmed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 29, 2007

H029010 PEOPLE v. PUENTES

The judgment is reversed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 29, 2007

H029043 STONELIGHT TILE et al. v. CALIFORNIA INSURANCE GUARANTEE ASSOCIATION

The judgment is affirmed. (not published)  
(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Duffy, J.)  
Filed March 29, 2007

H028904 PEOPLE v. LE

The judgment is affirmed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 29, 2007

H030096 MORTGAGETREE LENDING v. ROSENVICK, INC.

The order regarding MortgageTree's motion to tax costs is reversed. The matter is remanded to the trial court with instructions to strike the award of attorney fees in the amount of \$4,438. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed March 29, 2007

Thursday, March 29, 2007 (continued)

H029535 PEOPLE v. TOSCANO

The judgment is affirmed. (not published)  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed March 29, 2007

Sixth Appellate District

San Jose, California

H029566 PEOPLE v. TILLEY

The order committing James Roy Tilley to the Department of Mental Health as a sexually violent predator is affirmed (not published)

(Bamattre-Manoukian, Acting P.J.; We concur: McAdams, J., Duffy, J.)

Filed March 29, 2007

H031137 PHAM v. PHAM

By the Court\*:

Appellant's motion to set aside dismissal is granted. The dismissal order filed March 9, 2007, is vacated and the appeal is restored to active status. The trial court is directed to proceed with record preparation forthwith.

Dated: March 29, 2007

RUSHING, P.J.

H031134 In re JOHN PLACENCIA on Habeas Corpus

By the Court\*:

Appellant's motion for reconsideration is denied.

Datd: March 29, 2007

RUSHING, P.J.

H029623 PEOPLE v. LOWE

The judgment is modified as follows: the sentence on count 3 for robbery is stayed pursuant to Penal Code section 654. The judgment is modified to record two convictions of simple kidnapping (§ 207, subd. (a)) in place of the two convictions of kidnapping for ransom (§ 209, subd. (a)) it currently records. The judgment is further modified to record one conviction for a first degree robbery (§§ 211, 212.5, subd. (b)) that occurred in 2003 and another conviction for a second degree robbery (§§ 211, 212.5, subd. (c)) that occurred in 2004 in place of the two convictions for second degree robbery (§§ 211, 212.5, subd. (c)) it currently records.

As so modified, the judgment is affirmed. The clerk of the superior court is directed to prepare a corrected abstract of judgment and to forward a copy of it to the Department of Corrections. The People's request to file supplemental briefing on defendant's claim regarding the validity of his guilty plea is denied as moot. (not published)

(Duffy, J.; I concur: Bamattre-Manoukian, Acting P.J.; Concurring & dissenting opinion by: Mihara, J.)

Filed March 29, 2007